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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,174	02/04/2002	Ronny L. Knak	32204	4911

7590 03/17/2004

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EXAMINER

HARTMANN, GARY S

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 03/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/067,174

Applicant(s)

KNACK ET AL

Examiner

Gary Hartmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 21-26 is/are pending in the application.
- 4a) Of the above claim(s) 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claim 26 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly submitted claim requires specific structure (set within a perimeter of the watercourse, for example) not required by the claims as originally presented (as claim 1 reads "span at least two opposing edges of the watercourse"). This presents a structure patentably distinct from that as originally claimed.
2. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 26 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 6-8 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Maguire (U.S. Patent 3,881,832). Maguire discloses a drainage system grate assembly including a frame (4) set within and spanning opposing edges of a watercourse (gutter) and a grate (10) seated within the frame (Figure 1). The frame is physically distinct from the watercourse, as the

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frame is steel and gutters are typically concrete, for example. The grate is physically distinct from the frame (Figure 2, for example). The grate includes at least one tread bar (11, 12, 13, 14) and at least one cross bar (15, 16) spanning the frame and supporting the tread bar. There is a flange (23) protruding from the crossbar and a locking element (6) operable to be secured to the flange and contact the frame in order to secure the grate within the frame (Figure 1). The locking element is physically distinct from the with respect to the grate since it extends generally vertically, while the grate extends generally horizontally.

The frame has ledges (5) for supporting the crossbars.

The locking element (6) meets the recitation of downwardly extending shelves.

There is a slanted side (24, for example) adjacent the flange.

The flange is substantially horizontal (Figure 2, for example).

The slanted side (24) is included on the crossbar and is adjacent a substantially vertical sidewall (22).

The locking element (6) is a flat bar.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 5, 9, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maguire, as applied above.

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Regarding claims 4 and 5, Maguire does not teach the channel/slot; however, it is common to recess a protruding bar structure in order to either create a smoother top surface, or to obtain a more secure positioning of adjacent bars. For either of these reasons, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included this feature with the crossbar of Maguire.

Regarding claims 9, 10 and 12, Maguire does not teach an additional hole or nut retainer; however, using a bolt/nut retainer through a hole is a common configuration for securing adjacent structures. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this configuration with Maguire in order to, for example, prevent theft. Note that horizontal member of Maguire could receive a bolt and that the vertical member does engage the frame.

Response to Arguments

6. Applicant's arguments filed 2/4/2002 have been fully considered but they are not persuasive. Regarding claims 21-25, note the discussion with respect to claim 26 in paragraph 1, above.

Regarding the limitation "physically distinct," note that this term can be read in many different ways. Simply, this does not positively recite a particular structural relationship. In order to overcome the 102(b) rejection, applicant must positively recite structure that is shown and described with respect to the present invention which is not shown and described by Maguire.

The examiner disagrees with the argument that Maguire does not teach a bolt and that it is beyond ordinary skill of one in the art to have modified Maguire in that fashion. Simply, it is common to use bolts in order to more securely position devices. The examiner would be remiss in allowing claim(s) based upon use of a bolt as a fastener.

Arguments with respect to claim 10 are moot as the arguments are more specific than the claims. The claim recites only that the vertical member is operable to engage the frame, not that the member is actually engaged. Subsequently, the newly added limitation "sliding" is a method limitation within an apparatus claim, wherein the apparatus is not necessarily engaged (note the phrase "operable to..."). Adding a method step in an apparatus claim in which the apparatus is unpositioned does not further limit the claim. Finally, the examiner maintains that portion (23) could be considered to be a substantially vertical member that could slide upward and behind the shelves (6).

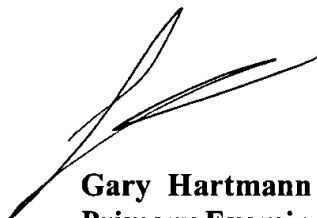
Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Gary Hartmann.

Gary Hartmann
Primary Examiner
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